A & L Specialties, Inc. and Hudson Valley District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 3-CA-17995

February 7, 1994

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Truesdale

Upon a charge filed by Hudson Valley District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on August 27, 1993, against A & L Specialties, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On November 19, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On November 26, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 25, 1993, notified the Respondent that unless an answer was received by November 1, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation with its principal office and place of business located at 17 Sage Road, Waterford, New York, has been engaged in the building and construction industry as a general construction contractor. During the 12 months preceding issuance of the complaint, the Respondent derived

gross revenues in excess of \$50,000 from providing services to other enterprises directly engaged in interstate commerce such as Merritt-Meridian, Inc. and Bast-Hatfield, Inc. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All carpenters, millwrights, dockbuilders and piledrivers employed by the Respondent in the performance of all work coming within the jurisdiction of the Union.

On May 20, 1992, the Respondent, an employer in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit employees without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act and has entered into a collective-bargaining agreement with the Union, the current term of which is for the period June 1, 1990, until May 31, 1994. For the period May 20, 1992, to on or about May 31, 1994, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit employees.

Since about May 1, 1993, the Respondent has ceased to continue in force and effect the 1990–1994 collective-bargaining agreement and has unilaterally abrogated, rescinded, and repudiated all terms of that agreement including the hiring hall procedures providing that the Union be the exclusive source of referrals of employees for employment with the Respondent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(1) and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unilaterally abrogated, rescinded, and repudiated the terms of its 1990–1994 contract including the hiring procedures, we shall order the Respondent to make the unit employees whole for any losses attributable to its actions,

including loss of earnings and other benefits, subject to applicable withholdings, suffered by reason of the Respondent's unlawful repudiation of the contractual hiring hall provisions and all other terms of the collective-bargaining agreement, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, A & L Specialties, Inc., Waterford, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing to bargain in good faith with the Union, the limited exclusive bargaining representative of the following appropriate unit of employees:

All carpenters, millwrights, dockbuilders and piledrivers employed by the Respondent in the performance of all work coming within the jurisdiction of the Union.

- (b) Failing since about May 1, 1993, to continue in force and effect the 1990–1994 contract and unilaterally abrogating, rescinding, and repudiating all terms of that agreement including the hiring procedures providing that the Union be the exclusive source of referrals of employees for employment with the Respondent.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Bargain in good faith with the Union, the limited exclusive bargaining representative of unit employees by adhering to the 1990–1994 contract by continuing it in force and giving effect to all its terms including the hiring procedure.
- (b) Make whole all unit employees and those employees who would have been referred, with interest, for its unilateral abrogation, rescission, and repudiation of the 1990–1994 contract including loss of earnings and other benefits suffered by reason of the Respondent's unlawful repudiation of the contractual hiring hall provisions and all other terms of the contract.
- (c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

- (d) Post at its facility in Waterford, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.
- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 7, 1994

| James M. Stephens, | Chairman |
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| Dennis M. Devaney, | Member |
| John C. Truesdale, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Hudson Valley District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the limited exclusive bargaining representative of our employees in the following unit which is appropriate for purposes of collective bargaining:

All carpenters, millwrights, dockbuilders and piledrivers employed by us in the performance of all work coming within the jurisdiction of the Union.

WE WILL NOT cease to continue in force and effect the 1990-1994 collective-bargaining agreement and WE

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WILL NOT unilaterally abrogate, rescind, and repudiate all the terms of the contract including the hiring procedures.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain in good faith with the Union as the limited exclusive collective-bargaining representative of our unit employees by adhering to the 1990–1994 contract by continuing it in force and giving effect to all its terms including the hiring procedures.

WE WILL make whole our unit employees and those employees who would have been referred, with interest, for any losses attributable to our actions, including loss of earnings and other benefits suffered by reason of our unlawful repudiation of the contractual hiring hall provisions and all other terms of the collective-bargaining agreement.

A & L SPECIALTIES, INC.